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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
REGIONAL HEARING CLERK
EPA REGION VI

In The Matter Of:	§	Clean Water Act § 309(a)
	§	
Paco Swain Realty, L.L.C.	§	ADMINISTRATIVE ORDER
a Louisiana corporation	§	ON CONSENT
	§	
Respondent.	§	Docket No. CWA-06-2012-2711

I. AUTHORITY

The following findings are made and Administrative Order on Consent issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated this authority to the Regional Administrator of EPA Region 6, who further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. FINDINGS OF VIOLATION

1. Paco Swain Realty, L.L.C. ("Respondent") is a limited liability company incorporated under the laws of the State of Louisiana, and as such, Respondent is "person" as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to the violations alleged herein, Respondent owned real property located west of Highway 447 in Sections 2 and 11, Township 6 South, Range 3 East and approximately five miles north of Walker, Livingston Parish, Louisiana ("subject property"). The subject property is a 200 acre subdivision known as Louisiana Purchase Equestrian Estates.

3. On multiple dates between, on or about June 2007 through September 2010, Respondent and/or other persons or entities acting at Respondent's direction and on its behalf

("Respondent's agents") discharged pollutants from point sources into waters of the United States without a permit issued under the Act. Specifically, Respondent and/or Respondent's agents "discharged dredged material" and "discharged fill material," as those terms are defined by 40 C.F.R. § 232.2, from point sources, including heavy equipment (e.g., earth moving equipment), in, on and to five wetlands and two tributaries within the subject property in connection with the development of a residential subdivision. The impacted wetlands and tributaries were adjacent to, hydrologically connected to, or had a significant nexus to a navigable-in-fact body of water named Beaver Branch West Colyell Creek. The impacted wetlands and tributaries are identified and fully described in a report entitled "Louisiana Purchase Equestrian Estates Wetland Determination Report" (October 18, 2010), a copy of which is attached to this Order

4. The dredged and fill material referenced in paragraph 3 is a "pollutant" as that term is defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

5. Each piece of heavy equipment used to carry out the discharges referenced in paragraph 3 was a "point source" as that term is defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

6. The impacted wetlands and tributaries referenced in paragraph 3 are "navigable waters" as that term is defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" as that term is defined by 40 C.F.R. § 232.2.

7. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the

authorization of, and in compliance with, a permit issued under the Act. Section 404 of the Act, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers ("Corps"), may issue permits for the discharge of dredged or fill material into waters of the United States.

8. Respondent did not have a permit issued by the Corps that authorized the discharges described in paragraph 3 above.

9. Each day of unauthorized discharge is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. CONSENT AGREEMENT

10. EPA and Respondent agree that settlement of this matter without litigation will save time and resources and is in the public interest and that entry into this Order on Consent is the most appropriate means of resolving this matter with respect to Respondent's restoration of certain wetlands as described below. As part of a settlement agreement, Respondent concurs in the issuance of this Order on Consent and agrees to comply with the Order, as set forth in paragraph 11 below.

IV. ORDER

11. Based on the foregoing Findings of Violation and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA orders Respondent to immediately cease any discharge of dredged and/or fill material to waters of the United States. EPA further orders Respondent to submit an application to the Corps for an after-the-fact ("ATF") permit issued under Section 404 of the Act for the unauthorized discharges alleged in this Order within thirty

(30) days of receipt of a signed copy of this Order. If Respondent fails to submit an application for an ATF permit in accordance with this paragraph, EPA orders Respondent to restore the impacted wetlands and tributaries within sixty (60) days of receipt of a signed copy of this Order. If Respondent fails to obtain an ATF permit for any reason, EPA orders Respondent to restore the impacted wetlands and tributaries within forty-five (45) days following Respondent's receipt of notice from the Corps that Respondent's permit application has been denied or is returned to Respondent by the Corps without final action.

V. GENERAL PROVISIONS

12. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 708 of the Administrative Procedure Act, 5 U.S.C. §§ 701–708.

13. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.

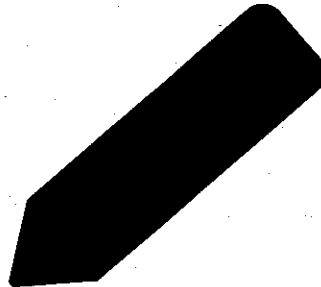
14. If EPA issues an administrative complaint or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary penalty. The failure to comply with this Order or the Act can result in civil penalties of up to \$37,500 per day of violation. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a

fine and/or imprisonment and may also become ineligible for certain government contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.

15. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of its obligation to comply with any applicable federal, state or local law or regulation.

16. The effective date of this Order on Consent is the date a signed copy is received by Respondent.

In recognition and acceptance of the foregoing:



Gordon Swain
Paco Swain Realty, L.L.C.

Date

William K. Honker, P.E.
Acting Director
Water Quality Protection Division
U.S. EPA Region 6

Date

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